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and Chevron UK Pension Plan

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

<hr/>		) No. 19-30088(DM)
11	IN RE:)
12	PG&E, CORPORATION	) CHAPTER 11
13	and	) Adversary Proc No. Lead Case
14	PACIFIC GAS AND ELECTRIC COMPANY,	) (Jointly Administered)
15	Debtors.)
16	_____ Affects PG&E Corporation	) CHEVRON'S RESPONSE TO THE
17	_____ Affects Pacific Gas and Electric	) REORGANIZED DEBTORS'
18	<u> X </u> Affects both Debtors	) OBJECTION TO SECURITIES LEAD
19	<i>*All papers shall be filed in the Lead Case, No. 19-</i>	) PLAINTIFF'S RENEWED MOTION
20	<i>30088 (DM).</i>	) TO APPLY BANKRUPTCY RULE
21		) 7023 AND CERTIFY A LIMITED
22		) CLASS
23)
24		) Date: November 17, 2020
25		) Time: 11:00 a.m. (PT)
26		) Before: Video Conference
27)
28		) Related Docket No.: 9152

1 Chevron Master Pension Trust (“**CMPT**”) and Chevron UK Pension Plan (“**CUPP**” and
2 together with CMPT, “**Chevron**”), with claims totaling approximately \$18 million dollars, through
3 undersigned counsel, submit this response (the “**Response**”) *to the Reorganized Debtors’ Objection*
4 *to Securities Lead Plaintiff’s Memorandum of Points and Authorities in Support of Motion to Apply*
5 *Bankruptcy Rule 7023 and Certify a Limited Class [Dkt. No. 9152] (the “Renewed 7023 Motion”),*
6 *filed by the Public Employees Retirement Association of New Mexico (“PERA”) (the “Reorganized*
7 **Debtors’ Objection**”) and respectfully represents as follows:

8 **BACKGROUND**

9 On January 29, 2019 (the “**Petition Date**”), PG&E Corporation (“**HoldCo**”) and Pacific Gas
10 and Electric Company (“**Utility**”, and together with HoldCo, the “**Reorganized Debtors**”)
11 commenced voluntary cases for relief under chapter 11 of the Bankruptcy Code in the United States
12 Bankruptcy Court for the Northern District of California.

13 Both CUPP and CMPT are prepetition holders of the Reorganized Debtors’ publicly traded
14 equity securities or debt securities. On April 16, 2020, CUPP and CMPT filed Rescission Proofs of
15 Claim on account of those holdings at Claim Nos. 101,365 and 101,416 respectively. On May 14,
16 2020, CUPP and CMPT filed amended Rescission Proofs of Claim at Claim Nos. 104,534 and 104,490
17 respectively (as amended, the “**Chevron Rescission Claims**”).

18 On December 9, 2019, the Public Employees Retirement Association of New Mexico
19 (“**PERA**”) filed its Motion to Apply Bank. Rule 7023 to Class Proof of Claim (the “**Initial 7023**
20 **Motion**”) [Docket No. 5042]. PERA is the court-appointed lead plaintiff in the securities class action
21 captioned as In re PG&E Corporation Securities Litigation, Case No. 18-03509 (the “**Securities**
22 **Litigation**”) pending in the U.S. District Court for the Northern District of California on behalf of
23 itself and the proposed class it represents in the Securities Litigation (the “**Class**”). On February 24,
24 2020, this Court denied the Initial 7023 Motion, but extended the bar date for individual members of
25 the Class.

26 On September 1, 2020, the Reorganized Debtors filed a Motion to Approve Securities ADR
27 and Related Procedures for Resolving Subordinated Securities Claims (the “**ADR Motion**”) [Dkt No.
28 8964]. The ADR Motion has been briefed and the hearing on that motion is scheduled for the same

1 time as hearing on the Renewed 7023 Motion.¹

2 On September 28, 2020, PERA filed the Renewed 7023 Motion seeking distinct relief from
3 the Initial 7023 Motion to provide an alternative to the ADR Motion and a more efficient and fair
4 means for handling rescission claims against the Reorganized Debtors' estates. Because Chevron has
5 an interest in ensuring that rescission claims are resolved in the most efficient and fair means, it files
6 this response to the Renewed 7023 Motion to the extent that it affects the rescission claims
7 administration process proposed in the ADR Motion. The chart attached as **Exhibit A** lists the goals
8 that any rescission claim resolution process should achieve, summarizes at a high level the
9 Reorganized Debtors' proposed procedures and PERA's proposed procedures, and includes a brief
10 explanation of why Chevron's prefers PERA's proposal to resolve rescission claims.

11 **RESPONSE**

12 The Reorganized Debtors have proposed, through the ADR Motion, a process to resolve
13 approximately 7,000 securities claims that would not only be exceedingly expensive to implement,
14 but also highlights the disparity in resources between the Reorganized Debtors on one side and
15 individual security holders on the other. The Renewed 7023 Motion relates directly to the ADR
16 Motion because the former motion, if granted, will help ameliorate Chevron's concerns with the latter.
17 For these reasons, the Renewed 7023 Motion is for all practical purposes not tied to the appeal of the
18 Initial 7023 Motion, as it was filed in the context of objecting to the proposed claims resolution
19 procedure laid out in the ADR Motion. Those procedures, if approved by the Court, will moot the
20 Initial 7023 Motion appeal. The Court's order denying the Initial 7023 Motion was tentative and
21 precatory; and done at a time when the Court's major focus was plan confirmation and before the
22 Court was presented with the ADR Motion.

23 If the Court grants the Renewed 7023 Motion, the issues and concerns Chevron raised in its
24 response to the ADR Motion would be resolved. Dozens or hundreds of separate alternative dispute
25

26 ¹ The Reorganized Debtors filed a reply in further support of *Reorganized Debtors' Motion to*
27 *Approve Securities ADR and Related Procedures for Resolving Subordinated Securities Claims*
28 [Dkt. No. 9378] (the "**ADR Motion Reply**") that raises issues relevant to the Renewed 7023 Motion
and the Reorganized Debtors' Objection since both motions turn on how rescission claims will be
liquidated.

1 resolution proceedings can be avoided and the expenses for each claimant reduced if the Renewed
2 7023 Motion is granted. Furthermore, contrary to the Reorganized Debtors' claims, the information
3 the Reorganized Debtors indicate they need to evaluate and resolve claims can be gathered through
4 coordination with one party more efficiently and with less cost. Moreover, the procedures impose an
5 unreasonable burden designed to ensure claimants will not be able to seek a court resolution due to
6 the expense and time that the proposed procedures will take.² Though non-binding mediation does
7 not decide a case unless the parties agree, the reality is that the mediators have great influence over
8 how claims are resolved, including here for example the ability to decide when mediation has reached
9 an impasse and the ability to then have an ex parte communication with the Court. Because most
10 litigated matters resolve without going to trial, it is simply not true that resolution of the Securities
11 claims through class proceedings will necessarily result in a trial. While it certainly benefits the
12 Reorganized Debtors to resolve claims informally because no one claimant is incentivized to seek a
13 court review, the results of which could positively affect the value of unliquidated claims, it does not
14 benefit the claimants. Resolving the claims at issue here through a single class action will avoid these
15 concerns.³

16 Chevron respectfully suggests, contrary to the Reorganized Debtors' arguments otherwise, that
17 if a particular claimant does not provide information sufficient to support a particular claim, that
18 information can be provide more easily through coordination with class counsel without forcing parties
19 into mandatory mediation; and the proposed settlement matrix that the proposed national reputation
20 34 Act mediator will negotiate will provide an efficient, even-handed and consistent framework for

21
22 ² Chevron acknowledges that procedures to resolve claims using mediation procedures have been
23 approved by other Bankruptcy Courts, though those procedures are identical to those proposed by
24 the Reorganized Debtors here, nor are the claims at issue identical. See *Declaration of Richard W.*
25 *Slack In Support of the Reorganized Debtors' Motion to Approve Securities ADR and Related*
26 *Procedures for Resolving Subordinated Securities Claims* [Dkt. No. 8966]. That being said, the
27 procedures approved by other Bankruptcy Courts if they were to be considered by this Court, do not
28 resolve Chevron's concerns on the facts presented here, Chevron prefers the procedures proposed by
PERA and submits that those procedures if applied here would result in a more efficient and
inexpensive claims resolution process.

³ Chevron does not take issue with the Reorganized Debtors using the omnibus objection process
with regard to any procedural objection that might apply to rescission claimants (for example, any
objections premised on a particular claim not being filed by a claims bar date), but rather objects to
the overall plan to liquidate rescission claims as the Reorganized Debtors propose. See ADR Motion
Reply at p. 21,

1 resolving the claims—in a way that will not cause huge disparities in the net to similarly situated
2 claimants.

3 Granting the Renewed 7023 Motion will not force claimants to accept a particular resolution.
4 Claimants, as in any other class proceeding, could choose to opt out of a class resolution. But
5 individual claimants who wish to pursue their claims can do so more efficiently as part of the proposed
6 class without paying up-front costs. Class counsel is best positioned to make legal and factual
7 arguments that apply across the class, and to gather and organize the facts and history needed to seek
8 a fair resolution. Class procedures are commonly used in cases like this to ensure that individual
9 claimants can have their claims proceed without up-front fees and costs. *See 1 Newberg on Class*
10 *Actions*, § 1:9 (5th ed.) (“By resolving common legal and factual issues in a single adjudication, class
11 actions utilize judicial resources more efficiently than piecemeal individual litigation. Put simply, it
12 is less expensive and time consuming to process one class action than many individual actions.”)
13 (citations omitted). The possibility of inconsistent rulings, flagged as problematic by the Reorganized
14 Debtors, exists under the proposed ADR procedures also. In fact, that possibility is heightened here
15 where some claimants have claims sufficiently large that that they could choose to pursue individual
16 claims in Court if those claims are not settled under the Reorganized Debtors’ proposed procedures.
17 *Id.* (“Class actions are particularly efficient when many similarly situated individuals have claims
18 sufficiently large that they would each pursue their own individual cases.”). In any event, the
19 Reorganized Debtors’ stated concerns about inconsistent rulings highlight that the procedures are
20 designed to indirectly affect the District Court litigation by reducing the potential class members.

21 The Renewed 7023 Motion would resolve Chevron’s concerns with the proposed ADR
22 procedures that establish a panel of mediators to be paid by the Reorganized Debtors who select the
23 panel of available mediators and compensates them all. That creates a conflict of interest in as much
24 as the employers are the Reorganized Debtors: a mediator, knowing that more engagements could be
25 available, could shape his or her mediation approach to secure more engagements going forward from
26 the Debtors who selected him and are paying him. Under the proposed ADR Motion procedures (*See*
27 *Proposed Order*, Ex. A-2, § IV.E.) the mediator decides when mediation is at an impasse and can have
28 ex parte communications with the Court.

1 Finally, the Renewed 7023 Motion, if granted by the Court, will eliminate two other issues
2 Chevron notes regarding the procedures proposed in the ADR Motion. First, if the procedures are
3 imposed by court order, no one can later complain that the pressure the procedures imposed on any
4 claimant are not fair. And second, the prospect of having to either retain counsel or go it alone creates
5 the incentive to settle even claims that might have merit.

6
7 **CONCLUSION**

8 WHEREFORE, Chevron respectfully requests that this Court grant the Renewed 7023 Motion
9 because it will facilitate resolution of rescission claims in the most efficient and fair means. Chevron
10 continues to reserve all rights and requests that the Court order such other relief as is just and
11 necessary.

12 Dated: November 9, 2020

PILLSBURY WINTHROP SHAW PITTMAN
13 LLP

14 /s/ Philip S. Warden
15 By: PHILIP S. WARDEN

16 Counsel to Chevron Master Pension
17 Trust and Chevron UK Pension Plan
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Exhibit A

7000+ Disputed claims:

What are our goals? What can we all agree to as common goals? Certainly, no one can dispute that this court of equity requires that claimants collectively seek:

1. Fairness
2. Equitable and even handed, uniform treatment as to each claimant
3. A resolution mechanism that is not unnecessarily expensive
4. Prompt and amicable resolution, with minimal involvement of the Court
5. A level playing field—so it is a fair contest

Debtors propose	Claimants propose
Mediation process for all 7000; presumably, thousands of separate mediations	a Single 34 Act mediator, with a national reputation
Discovery: debtor wants each claimant to provide a great deal of data; collected manually	a common data base—with individual additional input as needed
Individual, mandatory mediations: all chosen and paid for by the debtors; no requirement that the mediators have any 34-act experience	a single mediation; preceded by a negotiated matrix; so claims can be uniformly slotted into various categories, and so any financial incentives for a panel mediator to curry favor with the Reorganized Debtors to obtain more work are eliminated
Debtors have no discernable budget; have already spent material sums on lawyers and economists with expertise in the field	Claimants do not have common fund from which to seek compensation; claimants have no experts and are not permitted to pool their advisor's talent; the costs of pursuing mandatory mediation creates an uneven playing field with disincentives for claimants with valid claims to spend the funds needed to have their day in court
Reorganized Debtors propose to allow Claimants to pursue claims in court only after mandatory mediation is completed	Claimants can opt out of the proposed class and pursue claims on their own if they choose to incur the costs of doing so; Claimants who choose not to opt out will be able to assert all

	valid defenses, even though their individual claims might more modest and they might otherwise choose to settle their claims without pressing valid defenses
Reorganized Debtors propose to have claims disallowed if the Claimants fail to provide information requested by the Reorganized Debtors	Claimants that might otherwise ignore notices from the Reorganized Debtors and choose not to participate in the required process based on the costs of proceedings or otherwise may agree instead to be part of a class that will allow them to participate in the claims adjudication process without incurring expenses and with the assistance of experienced counsel